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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,339

02/06/2004

Eugene A. Helmsie

60,137-207;136-3032-U

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82074

7590

07/09/2010

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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

07/09/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/774,339	Applicant(s) HELMETSIE ET AL.	
	Examiner Huyen Le	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18, 21-27, 30 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong (2,036,184).

Regarding claim 18, the Armstrong reference discloses a surround comprising a base portion (a floor portion of a room); a first wall portion (the left wall of the room); a second wall portion (the right wall of the room); and a corner portion (formed by the meeting portions of the walls including member 1) engaged with the base portion, the first wall portion and the second wall portion, the corner portion comprising a multiple of horizontal shelf slots (spaces between members 8,9,10) arranged vertically along a length of the corner portion, wherein the horizontal shelf slots comprise blind openings of uniform height that extends into the corner portion to support a corresponding shelves 18 and 19, wherein the base receives the first wall portion and the second wall portion and the corner portion.

The introductory statement of the intended use have been carefully considered but deemed not to impose any structural limitations on the claim(s) distinguishable over the device of Armstrong which is capable of being used in a bathroom or shower surround.

Regarding to claim 21, at least one of the horizontal shelf slots is defined by a top wall portion 8, a bottom wall portion 9, rear wall portion 1, and an open front end.

Regarding claim 22, one of the horizontal shelf slots includes a uniform nominal depth extending into the corner portion.

Regarding claim 23, each of the horizontal shelf slots is adapted to support one of the corresponding multiple of shelves.

Regarding claim 24, the corner portion, the top wall portion 8, the bottom wall portion 9, the arcuate rear wall portion 1 comprise a single continuous piece.

Regarding claim 30, the surround comprises a top rim (the ceiling of a room) engageable with the corner, the first wall and second wall portions.

Regarding claim 33, the horizontal slots forms protrusions 8,9,10 on the rear side of the corner portion

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

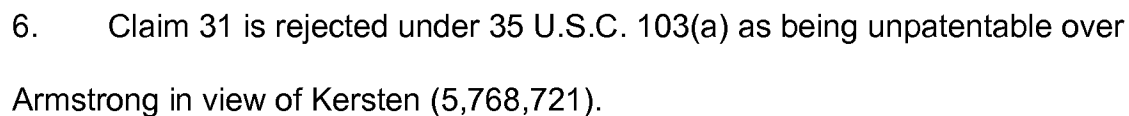
4. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Hine (1,059,464).

Although Armstrong does not disclose multiple segments of the shelf slots arranged horizontally, attention is directed the Hine reference which teaches a shelf structure comprising multiple segment shelf slots (between projections) arranged

horizontally. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ slots formed between projections as taught by Britt et al. on the Armstrong shelf device for accommodating different sizes of shelves.

5. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Kitamura et al. (4,718,131)

Although Armstrong does not disclose the base portion (bottom wall) having a flange extending from the base portion, attention is directed to the Kitamura et al. reference which teaches a bottom wall R2 of a bathroom having flange extending therefrom (see flange on the left side of floor R2 in Fig. 18). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ Armstrong shelf device in a room having a bottom wall with a flange extending therefrom in view of the teaching of Kitamura et al., wherein doing so would be an obvious design choice.



Although Armstrong does not disclose a shower head, attention is directed the Kersten reference which teaches a shower head 19 mounted on the ceiling of a bathroom. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a shower head on the ceiling of the room in Armstrong as taught by Kersten.

Regarding claim 32, Kersten also teaches a water supply 16 behind the wall, having a water supply behind the wall of Armstrong would have been obvious.

Response to Arguments

7. Applicant's arguments on 03/29/2010 with respect to claim 18 have been considered but are not persuasive.

8. Applicant argues that the floor of Armstrong does not receive the first wall portion, the second wall portion and the corner portion as claimed. Examiner disagrees with applicant. The floor of the room in Armstrong would receive the first wall and second wall of the room. The corner portion is attached to the corner walls. Therefore, it is also being received by the floor as well.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Huyen Le/

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Art Unit: 3751

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Primary Examiner, Art Unit 3751